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Congress of the United States House of Representatives

Washington, DC 20515

November 23, 2010

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The Honorable Julius Genachowski
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20515

Dear Chairman Genachowski:

It has come to my attention that the Commission may soon issue an Order regarding wireless data roaming. I am concerned about this action and respectfully ask the Commission to consider several factors before moving forward in an attempt to regulate the wireless market.

The wireless industry has seen a tremendous amount of growth over the last 15 years. In fact, in 1995 there were nearly 29 million wireless customers across the U.S. By 2010 that number has grown to over 293 million customers. This growth is attributed to the innovation and investment in wireless networks and the devices that have transformed the way that we communicate today. In 1995, consumers used cell phones simply to make phone calls. Today, they use smartphones not only to talk, but to text, email, surf the Internet, watch videos and download apps that have given a whole new meaning to the term "mobile."

I have concern over the Commission's potential Order on several grounds and seek additional information and answers to the questions below please:

- 1) Please identify what provisions in the Communications Act give the Commission the statutory authority to regulate data roaming and provide a basis on which the Commission can move forward with an Order.
- 2) It is my understanding that data roaming and the wireless broadband Internet access that it provides are not telecommunications services, but rather information services that the Commission has previously determined are not subject to common carrier regulation. Given that the Commission has stated that roaming is a common carrier obligation, how does the Commission justify adoption of a data roaming mandate in light of Sections 153 and 332 of the Act?
- 3) Section 332 of the Act permits common carrier regulation of "commercial mobile service" but prohibits common carrier regulation of "private mobile services." Please

explain how data roaming meets the statutory definition of commercial mobile service or its functional equivalent.

I also raise a concern that the Commission is "moving the goalposts" after several carriers have bid and paid for spectrum in the 700 MHz band. Many of these carriers have finished field testing and trials of 4G services and are in the process of launching service to the general public. Establishing overly prescriptive regulations on a nascent service that has not yet even launched and been made available to the public is concerning. Absent clear statutory authority in the Act, or new authority given to the FCC by Congress, and concrete data suggesting a problem in the marketplace, I see no justification for the Commission to move forward in its proceeding.

Furthermore, I am concerned about the message that the Commission could be sending to the marketplace. According to the latest figures by the CTIA-The Wireless Association, wireless carriers spent over \$21.6 billion dollars in capital expenditures from June 2009 to June of 2010. Since 2001, wireless carriers have made an average combined investment of more than \$20.2 billion per year to upgrade their networks. This represents a huge amount of economic investment and job creation at a time when the rest of the economy has been struggling. Moreover, the number of jobs created by wireless carriers has grown from 60,000 in 1995 to over 235,000 employees who are directly employed by wireless carriers today. To layer the wireless industry with onerous and overly prescriptive regulations would only create more uncertainty and government bureaucracy and do little to incentivize all wireless carriers to continue to invest in their networks.

In order to keep wireless competition vibrant and encourage continued innovation and creativity, I hope the Commission will resist the temptation to add new layers of regulation. Issuing an Order that tests the limits of the statutory authority given to you by Congress could potentially stifle innovation and investment and create additional uncertainty in the marketplace.

Thank you and I look forward to hearing from you soon.

Sincerely,



Sue Myrick
Member of Congress



Federal Communications Commission
Washington, D.C.
December 13, 2010

The Honorable Sue Myrick
U.S. House of Representatives
230 Cannon House Office Building
Washington, D.C. 20515

Dear Congresswoman Myrick:

Thank you for your letter expressing concern about the possible adoption of roaming obligations in the wireless data roaming proceeding, and expressing special interest in the Commission's statutory authority to adopt such obligations. Your views are very important and will be included in the record of the proceeding and considered as part of the Commission's review.

Earlier this year, the Commission sought comment on data roaming and the extent of its authority to impose data roaming obligations on wireless service providers. In the *Notice*, the Commission stated its belief that regardless of whether the services a subscriber would access through roaming arrangements are telecommunications services or information services, the Commission has statutory authority to require automatic roaming for them. The *Notice* stated that if these services are telecommunications services, they could be subject to roaming obligations pursuant to Commission authority under Title II and Title III, and if they are information services, the Commission has the authority to promulgate roaming requirements under Title III and other provisions.

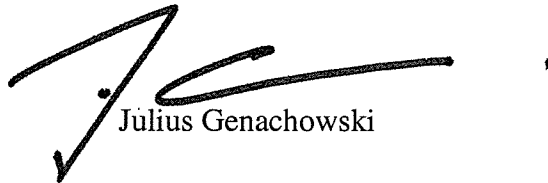
The Commission received a substantial record with respect to its statutory authority. Proponents of data roaming, such as Clearwire, SouthernLINC, T-Mobile USA, and U.S. Cellular, assert that the Commission's legal authority under Title III of the Communications Act to manage radio spectrum provides the Commission with a sufficient legal basis to require any entity utilizing radio spectrum to make available data roaming to other wireless service providers. Some proponents, including Cellular South, Leap Wireless, and MetroPCS, argue that the Commission also has authority under Title I and II of the Act. In contrast, AT&T and Verizon Wireless argue that the Commission lacks the legal authority to require data roaming under any provision of the Communications Act. There is also a dispute over the application of Section 332 of the Communications Act to data roaming.

The data roaming proceeding remains pending, and the staff is still in the process of reviewing the record and analyzing the arguments and options. I want to assure you that the

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Commission will weigh carefully the legal and policy issues raised in the record before issuing a decision. Please let me know if I can be of any further assistance.

Sincerely,

A handwritten signature in black ink, consisting of a large, stylized 'J' followed by a horizontal line and a small dot at the end.

Julius Genachowski